

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

3 CONTENTGUARD HOLDINGS, INC.)(Civil Docket No.
4)(2:13-CV-1112-JRG
VS.)(MARSHALL, TEXAS
5)(
6)(NOVEMBER 19, 2015
APPLE, INC.)(4:21 p.m.

7 TRANSCRIPT OF JURY TRIAL
8 BEFORE THE HONORABLE RODNEY GILSTRAP
9 UNITED STATES DISTRICT COURT

10 APPEARANCES:

11 FOR THE PLAINTIFF: Mr. Samuel F. Baxter
12 Ms. Jennifer Truelove
MCKOOL SMITH, PC
104 East Houston Street, Suite 300
13 Marshall, Texas 75670

14 Mr. Robert A. Cote
MCKOOL SMITH, PC
15 One Bryant Park, 47th Floor
New York, New York 10036

16 Mr. Dirk D. Thomas
17 MCKOOL SMITH, PC
1999 K Street, N.W., Suite 600
18 Washington, DC 20006

19 APPEARANCES CONTINUED ON THE NEXT PAGE:

20 COURT REPORTER: SHELLY HOLMES, CSR, TCR
21 Official Court Reporter
United States District Court
22 Eastern District of Texas
Marshall Division
100 E. Houston, Suite 125
23 Marshall, Texas 75670
(903) 923-7464

24 (Proceedings recorded by mechanical stenography, transcript
25 produced on CAT system.)

1 APPEARANCES CONTINUED:

2 FOR THE DEFENDANT:

Mr. David T. Pritikin
Mr. Nathaniel C. Love
SIDLEY AUSTIN LLP
One South Dearborn St.
Chicago, Illinois 60603

Mr. Dave Anderson
Mr. Theodore W. Chandler
SIDLEY AUSTIN LLP
555 California St.
San Francisco, CA 94104

Ms. Melissa Smith
GILLAM & SMITH
303 South Washington Avenue
Marshall, Texas 75670

Mr. Bryan K. Anderson
SIDLEY AUSTIN LLP
1001 Page Mill Road, Bldg. 1
Palo Alto, CA 94304

Mr. Jeffrey P. Kushan
Mr. Michael P. Franzinger
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005

25

P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

All right. Counsel, having previously met at length in chambers earlier this afternoon and having conducted as a part of that meeting an informal charge conference, I reviewed the joint -- jointly submitted proposed final jury instructions and verdict form with counsel for both parties.

We discussed at length the competing proposals, as well as new suggestions, and I, the Court, received direct input from both sides as to those competing proposals.

I've considered those and weighed the discussion in the informal charge conference and have subsequently presented to counsel for both parties a revised final jury instruction form and a revised verdict form which contains what the Court believes is the appropriate charge and verdict to be submitted to the jury in this case.

We'll now conduct a formal charge conference on the record to allow each side to make and preserve any objections they feel are appropriate in light of the changes set forth in this revised jury charge and verdict form.

Just for simplicity, counsel, whoever is going to speak on behalf of Plaintiff and Defendant, if you'd both go

1 to the podium and remain there. My intent is to walk
2 through both documents on a page-by-page basis and hear
3 objections that might apply to each as we go through the
4 documents.

5 So if those persons will go to the podium, we'll
6 start with the final jury instructions. And beyond the
7 cover page, we'll start with numbered Page 1.

8 Are there any objections from either party to
9 anything contained on Page 1 of the proposed and revised
10 final jury instructions?

11 MS. SNIDER: No objection from Plaintiff.

12 MR. LOVE: No objection from the Defendant.

13 THE COURT: All right. Going next to Page 2, are
14 there any objections?

15 MS. SNIDER: No objection from Plaintiff.

16 MR. LOVE: No objection from the Defendant.

17 THE COURT: Going next to Page 3, are there
18 objections?

19 MS. SNIDER: No objection from Plaintiff.

20 MR. LOVE: None from the Defendant.

21 THE COURT: Going then to Page 4, are there any
22 objections?

23 MS. SNIDER: No objection from Plaintiff.

24 MR. LOVE: No objection from the Defendant.

25 THE COURT: Next turning to Page 5, are there any

1 objections?

2 MS. SNIDER: Yes, Your Honor.

3 ContentGuard has an objection to the instruction:
4 If the evidence is equally weighted, then the preponderance
5 of the evidence burden has not been met.

6 ContentGuard objects because the sentence is
7 surplusage, and considered with the totality of the
8 paragraph and the jury charge, it nudges the jury to a
9 finding of equally weighted.

10 THE COURT: All right.

11 MS. SNIDER: It's never been given in a jury
12 instruction that I am aware of, including all the model
13 patent instructions, and I don't believe there was an
14 authority cited for its inclusion.

15 THE COURT: And just so I'll be looking at the
16 same thing you're talking about, Ms. Snider, where on Page 5
17 do you find this?

18 MS. SNIDER: On Page 5, it is the second full
19 paragraph -- the last sentence of the second full paragraph.

20 THE COURT: Well, I'm not seeing it on the copy I
21 have in front of me. Let me double-check another source.

22 MR. BRYAN ANDERSON: Your Honor, there appears to
23 be a discrepancy between the PDF that was emailed to us --

24 THE COURT: Maybe a pagination --

25 MR. BRYAN ANDERSON: -- that we're looking at

1 right now, so we may need a few minutes to match up what
2 you're looking at, Your Honor.

3 MS. SNIDER: I'm sorry, Your Honor. We used a
4 printed -- printed a copy of the email. If it changed after
5 that, I did not have the opportunity to print it.

6 THE COURT: Well, let's -- let's -- let's see if
7 we can get on the same page.

8 MS. SNIDER: All right.

9 THE COURT: The page that I have numbered 5 starts
10 with a paragraph at the top that says: ContentGuard has the
11 burden of proving willful infringement. Is that the page
12 you're looking at?

13 MS. SNIDER: Okay. I -- on my page -- my copy,
14 it's on 5. I will now use yours and object to Page 4 -- the
15 last paragraph on Page 4, the last sentence --

16 THE COURT: Okay.

17 MS. SNIDER: -- on Page 4.

18 THE COURT: Now we're looking at the same thing.

19 All right. That objection is overruled.

20 Is there anything else on Page 4?

21 MS. SNIDER: Not from Plaintiff, Your Honor.

22 THE COURT: From Defendant?

23 MR. LOVE: Not from the Defendant.

24 THE COURT: Then we'll go to Page 5. Any
25 objections from either party here?

1 MR. LOVE: Yes, Your Honor.

2 Apple intends to move for judgment as a matter of
3 law on willful infringement, and for the reasons set forth
4 there, would ask that any instruction on willful
5 infringement -- here it is.

6 ContentGuard has the burden of proving willful
7 infringement by clear and --

8 THE COURT: You're going to need to speak up,
9 Mr. Love.

10 MR. LOVE: ContentGuard has the burden of proving
11 willful infringement by clear and convincing evidence. This
12 and the later instruction, willful infringement, we'd object
13 to those for the reasons set forth in our JMOL motion.

14 THE COURT: Well, as I indicated to you in the
15 informal charge conference, this is prepared on an
16 assumption that none of the JMOLs will be granted. Should I
17 grant your JMOL, I will adjust the charge accordingly.

18 MR. LOVE: Thank you, Your Honor.

19 THE COURT: But at this point, because I've not
20 ruled on the JMOLs, those issues are all included in the
21 charge as you have it.

22 Anything else on Page 5?

23 Then we'll go to Page 6. Are there any objections
24 from either party on Page 6?

25 MS. SNIDER: Plaintiff has no objections, Your

1 Honor.

2 MR. LOVE: No objections from the Defendant.

3 THE COURT: All right. We'll go to Page 7. Any
4 objections there?

5 MS. SNIDER: Plaintiff has no objections to
6 Page 7.

7 MR. LOVE: No objections from the Defendant to
8 Page 7.

9 THE COURT: All right. Turning then to Page 8,
10 are there any objections?

11 MS. SNIDER: No objection to Page 8.

12 MR. LOVE: No objection to Page 8 from the
13 Defendant.

14 THE COURT: Turning then to Page 9, are there
15 objections from either party?

16 MS. SNIDER: Plaintiff has no objection to Page 9.

17 MR. LOVE: No objection from the Defendant.

18 THE COURT: All right. Next is Page 10. Is there
19 any objection from either party as to Page 10?

20 MS. SNIDER: Plaintiff has no objection to
21 Page 10.

22 MR. LOVE: No objection from the Defendant.

23 THE COURT: All right. Turning then to Page 11,
24 is there objection?

25 MS. SNIDER: There's no objection by Plaintiff to

1 Page 11.

2 MR. LOVE: For the Defendants, for the reasons to
3 be set forth on the JMOL, understanding Your Honor's
4 instruction, we would object to an instruction on
5 infringement under the Doctrine of Equivalents.

6 THE COURT: All right. That objection is
7 overruled.

8 Anything on Page 12, counsel?

9 MS. SNIDER: Your Honor, I think this is just a
10 typo to which both parties agree. On the second full
11 paragraph, the second line to the issue of whether
12 behavioral integrity exists on the iTunes servers, it should
13 be plural.

14 THE COURT: Does Defendant agree with that change?

15 MR. LOVE: Yes, Defendant agrees.

16 THE COURT: I'll make that change.

17 Anything else on Page 12?

18 MS. SNIDER: Nothing from Plaintiff.

19 MR. LOVE: Defendant would object to the
20 instruction on inducement of infringement for the reasons
21 set forth in our JMOL motion, again, understanding Your
22 Honor's statement.

23 THE COURT: All right. Objection is overruled.

24 We'll turn now to Page 13. Any objection from
25 either party on this page?

1 MS. SNIDER: Plaintiff has no objection.

2 MR. LOVE: An objection, Your Honor, specifically
3 on the willful blindness portion of the inducement
4 instruction, No. 3 on Page 12 -- Part 3(b). Apple would
5 object to the willful blindness instruction.

6 Apple also objects to the contributory
7 infringement instruction. And I apologize. That is first
8 mentioned on the previous page, Page 12. For the reasons
9 set forth in our JMOL, we would object to any instruction on
10 contributory infringement.

11 THE COURT: All right. Those objections lodged by
12 the Defendant are overruled.

13 Anything else on Page 13?

14 If not, we'll turn to Page 14 of the --

15 MR. LOVE: I apologize, Your Honor.

16 THE COURT: I'm sorry?

17 MR. LOVE: I would only note that when I said the
18 willful blindness instruction was in 3(b), it also continues
19 to the paragraph that immediately follows that. I simply
20 wanted to note that.

21 THE COURT: All right. Counsel, I take your
22 objection as to the entire willful blindness instruction,
23 and it is overruled.

24 But for clarity of the record and the benefit of
25 the court reporter, you are going to have to speak up or

1 get -- raise that microphone up to where it's closer to
2 where you're speaking.

3 MR. LOVE: I will, Your Honor. Thank you.

4 THE COURT: That helps.

5 All right. I think we're next on Page 14 of the
6 final jury charge. Are there objections from either party
7 here?

8 MS. SNIDER: Plaintiff has no objections.

9 THE COURT: Any objection from Defendant?

10 MR. LOVE: As already noted, we object to the
11 instruction on willful infringement, but I understand Your
12 Honor's ruling.

13 THE COURT: All right. That's overruled.

14 Hearing nothing further, we'll turn to Page 15 of
15 the proposed final jury instructions. Is there objection
16 here from either party?

17 Hearing nothing, we'll go --

18 MR. LOVE: There's no objection from the
19 Defendant.

20 THE COURT: All right. Ms. Snider, does the
21 Plaintiff have -- Plaintiff have an objection on Page 15?

22 MS. SNIDER: No, Your Honor. Plaintiff has no
23 objection.

24 THE COURT: Then we will go next to Page 16 of the
25 final jury charge. Is there objection from either party?

1 MR. LOVE: No objection from the Defendant.

2 MS. SNIDER: Your Honor, Plaintiff objects to the
3 failure to exclude one of the patents from the obviousness
4 instruction, that is, Patent '053, Claim 1, as there is no
5 evidence that -- from which the jury could find that that
6 patent was obvious.

7 The instruction on obviousness tells the jury that
8 they have to determine whether a claimed invention is
9 obvious by looking at the scope and content of the prior art
10 and any differences between the prior art and the claimed
11 invention.

12 And the jury has not been -- has not received any
13 evidence on either of those two elements of obvious --
14 their -- their obviousness determination duty.

15 THE COURT: Let me ask you, Ms. Snider, does the
16 Plaintiff intend to move for judgment as a matter of law in
17 this regard?

18 MS. SNIDER: Yes, Your Honor.

19 THE COURT: Well, as I've indicated to defense
20 counsel, these objections are subject to any JMOL rulings
21 and should the judgment -- motion for judgment as a matter
22 of law under Rule 50(a) of the Federal Rules of Civil
23 Procedure be granted, I'll make whatever corresponding
24 adjustment to the charge results from the action on that
25 motion.

1 But prior to those motions being ruled on, matters
2 that might otherwise be covered under the parties'
3 respective Rule 50(a) motions are included in the charge.

4 So with that explanation, your objection is
5 overruled.

6 MS. SNIDER: Thank you, Your Honor. I understand.

7 THE COURT: All right. Anything else on Page 16,
8 counsel?

9 MR. LOVE: Not from the Defendant.

10 THE COURT: Anything else from the Plaintiff on
11 Page 16?

12 MS. SNIDER: No, Your Honor.

13 THE COURT: Then we'll move to Page 17. Any
14 objections from either party there?

15 MR. LOVE: None from the Defendant.

16 MS. SNIDER: None from the Plaintiff.

17 THE COURT: All right. Moving then to Page 18,
18 are there objections from either side?

19 MR. LOVE: Not from the Defendant.

20 MS. SNIDER: Not from the Plaintiff.

21 THE COURT: All right. Turning to Page 19, are
22 there objections?

23 MS. SNIDER: Not from the Plaintiff, Your Honor.

24 MR. LOVE: Not from the Defendant.

25 THE COURT: I'll note for the record, counsel, at

1 the end of Subpart 10 on the lower portion of Page 19, at
2 the end of that line, there's a stray bracket that's there.
3 I'll delete that just as a matter of typographical
4 correction.

5 Other than that and hearing no further objections,
6 we'll move to Page 20. And I'll ask if there are objections
7 from either party as to anything on Page 20 of the final
8 jury instructions.

9 MR. LOVE: Not from the Defendant.

10 MS. SNIDER: Not from the Plaintiff. But if I
11 may, Your Honor, turn to Page 19?

12 THE COURT: All right.

13 MS. SNIDER: The second to last -- last paragraph,
14 it begins: If and only if you find that Apple infringed any
15 claim of the asserted patents and such claim is not invalid,
16 then you must consider what amount of damages, if any, to
17 award to ContentGuard.

18 THE COURT: Yes.

19 MS. SNIDER: And we -- ContentGuard objects to the
20 inclusion of "if any," based on the further instruction on
21 the last paragraph "the damages you award must be adequate
22 to compensate ContentGuard for the infringement you find,"
23 as we object that they are inconsistent because they
24 indicate the jury could decide not to award damages, even
25 though there was infringement and no invalidity.

1 THE COURT: All right. Well, I'll omit the words
2 "if any" from the second line of the paragraph beginning,
3 "if and only if," in light of your objection.

4 Anything else on Page 19?

5 Quite honestly, having added "if and only if" at
6 the beginning, the additional "if any" makes it awkward to
7 read anyway.

8 MS. SNIDER: Yes, Your Honor.

9 THE COURT: All right. I'll grant that objection.

10 MS. SNIDER: Thank you.

11 THE COURT: All right. We'll go back to Page 20.
12 Are there any objections here?

13 I believe I heard none from the Defendant.

14 MR. LOVE: I -- I apologize, Your Honor, I may
15 have missed one in translating this over.

16 On Page 20, Defendant objects to the second
17 sentence of the fourth full paragraph: However, if you find
18 that Apple has infringed any valid claim of the patent,
19 ContentGuard is entitled to recover no less than a
20 reasonable royalty for each infringing sale or use of its
21 inventions by Apple.

22 We'd object to the extent that that suggests that
23 a royalty should be metered by the sales or uses of our
24 products, as opposed to a lump sum or another form of
25 royalty.

1 THE COURT: All right. That objection is
2 overruled.

3 And if you're going to read sections like that,
4 Counsel, please read them a little slower so that the court
5 reporter can keep up with you.

6 MR. LOVE: I'll do that, Your Honor. Thank you.

7 THE COURT: All right. We'll move on from
8 Page 20, then, to Page 21. Are there objections from either
9 party here?

10 MR. LOVE: Yes, Your Honor.

11 Defendant would object to the inclusion of
12 Georgia-Pacific Factor -- the one that is numbered 6 at the
13 bottom of Page 21.

14 THE COURT: All right. That objection is
15 overruled.

16 Anything from the Plaintiff on Page 21?

17 MS. SNIDER: No, Your Honor. No objection.

18 THE COURT: Then we'll turn next to Page 22. Are
19 there objections here?

20 MR. LOVE: Yes, Your Honor.

21 Defendant would object to the inclusion of the
22 Factor No. 8 at the top of Page 22.

23 THE COURT: All right. That objection is
24 overruled.

25 Any other objections on Page 22?

1 MS. SNIDER: Your Honor, the Plaintiff has an
2 objection beginning at -- beginning on Page 22: For
3 purposes of determining a reasonable royalty, you may
4 consider whether, at the time of the hypothetical
5 negotiation, Apple had non-infringing alternatives to taking
6 a license from ContentGuard.

7 We object because it's an incomplete and therefore
8 inaccurate statement of the law as it does not instruct the
9 jury that the non-infringing alternative must be available
10 and that it must be acceptable and -- commercially
11 acceptable, and we further object that there is no evidence,
12 which will be included in our JMOL.

13 THE COURT: All right. Just for completeness,
14 does Defendant have any objection on Page 22 or carrying
15 over to Page 23?

16 MR. LOVE: No objection to that passage from
17 Defendants.

18 THE COURT: All right. Well, the Plaintiff's
19 objection is overruled.

20 Does Defendant or Plaintiff have any additional
21 objection to anything on Page 23?

22 MS. SNIDER: Plaintiff has none, Your Honor.

23 MR. LOVE: Yes, Your Honor. I apologize for just
24 a second.

25 I need to find where I have this -- at the top of

1 Page 23 -- at the end of the paragraph on Page 23,
2 Content -- Apple would propose adding the following
3 language: ContentGuard is not entitled to capture as part
4 of a reasonable royalty the value of the features of Apple's
5 products that are not covered by ContentGuard's patents.

6 THE COURT: All right. That objection is
7 overruled.

8 Anything else on Page 23?

9 MS. SNIDER: Plaintiff has none.

10 THE COURT: Anything further from Defendant on
11 Page 23?

12 MR. LOVE: Yes, Your Honor. I apologize. The
13 second full paragraph that begins "accordingly --"

14 THE COURT: Yes.

15 MR. LOVE: -- following -- at the end of that
16 first sentence, it ends: Apple's accused products. We
17 would propose inserting: Comma, not on the products
18 themselves.

19 I apologize. I was referring to a paragraph on
20 the other printout we have. It is still the second full
21 paragraph, the sentence beginning "accordingly."

22 THE COURT: No. I see where you are, Counsel.

23 MR. LOVE: Thank you.

24 THE COURT: I see where you are. And having
25 considered your addition, I overrule the objection. The

1 sentence will stay as is.

2 Anything else on this page?

3 If not, we'll turn to Page 24 of the final jury
4 instructions. Any objections from either party here?

5 MS. SNIDER: Your Honor, the Plaintiff has none.

6 MR. LOVE: No objection from the Defendant.

7 THE COURT: All right. Page 25?

8 MS. SNIDER: Your Honor, the Plaintiff has none.

9 THE COURT: All right.

10 MR. LOVE: Yes, Your Honor.

11 Here would be the place where we would object and
12 propose the two instructions that were set forth in the
13 filing, the one that Apple proposed entitled License and the
14 instruction entitled Copyright Restrictions on Digital
15 Content. The content of those proposals were set forth in
16 the proposals filed with the Court.

17 THE COURT: The Court's well familiar with those.
18 They were discussed at length in the informal charge
19 conference, and those suggested by the Defendant, the Court
20 has elected not to include them in the final jury charge,
21 and your objection is overruled.

22 MR. LOVE: Thank you, Your Honor.

23 THE COURT: All right. We'll turn now to Page 26
24 of the final jury instructions. Any objections here?

25 MS. SNIDER: Plaintiff has no objections, Your

1 Honor.

2 MR. LOVE: No objection from the Defendant.

3 THE COURT: All right. And then turning to
4 Page 27, which is the last page, are there objections from
5 either party?

6 MS. SNIDER: The Plaintiff has no objection, Your
7 Honor.

8 MR. LOVE: No objection from the Defendant.

9 THE COURT: All right. Counsel, we'll next turn
10 to the verdict form. The first page includes the style and
11 number of the case. Are there any objections to the first
12 page or the front page of the verdict form from either
13 party?

14 MR. LOVE: No objection from the Defendant.

15 MS. SNIDER: No objection from the Plaintiff.

16 THE COURT: Turning to Page 2 of the verdict form,
17 wherein I find Question 1, is there an objection from either
18 party?

19 MR. LOVE: Yes, Your Honor. There's an objection
20 from the Defendants.

21 First, as proposed in Apple's verdict form, Apple
22 requests findings from the jury on both direct, indirect,
23 and infringement under the Doctrine of Equivalents.

24 Additionally, Apple would request, given the
25 number of different accused products in the case, a finding

1 of infringement under each of those doctrines for all of the
2 devices, iPods, iPhones, iPads, Mac computers, Windows
3 computers, and the iTunes servers.

4 THE COURT: Is there objection on Page 2 from the
5 Plaintiff?

6 MS. SNIDER: No, Your Honor.

7 THE COURT: Defendant's objection on Page 2 of the
8 verdict form is overruled.

9 Turning to Page 3, is there objection from either
10 party here with regard to Question 2 of the verdict form?

11 MS. SNIDER: Your Honor, Plaintiff repeats its
12 objection to the inclusion of the '053 patent within
13 Question 2 that asks about invalidity because we believe
14 there is no evidence that the patent is obvious that -- for
15 the jury's determination.

16 THE COURT: I understand, and the verdict form,
17 like the final jury instructions, are subject to the
18 Rule 50(a) motions. Should I grant your motion, I'll remove
19 that from Question 2. If I deny your motion, it will stay.

20 So --

21 MS. SNIDER: Thank you, Your Honor.

22 THE COURT: -- subject to that, your objection is
23 overruled.

24 All right. If there's nothing further, then we'll
25 turn to Page 4 of the verdict form, wherein I find

1 Question 3. Is there objection from either party?

2 MR. LOVE: Not from the Defendant, Your Honor.

3 MS. SNIDER: Not from the Plaintiff, Your Honor.

4 But if I may, Question No. 2 -- this is not an objection,
5 but perhaps a -- a suggestion that since the only invalidity
6 issue that's going to be presented to the jury is on
7 obviousness, then perhaps the question should tell the jury
8 that that's what we're asking, whether the claims are
9 invalid for obviousness.

10 THE COURT: So, in other words, what you're
11 suggesting, Ms. Snider, is that Question 2 on Page 3 of the
12 verdict form be rewritten to read: Did Apple prove by clear
13 and convincing evidence that any of the following claims are
14 invalid as being obvious?

15 MS. SNIDER: Yes, Your Honor.

16 THE COURT: You're suggesting --

17 MS. SNIDER: Well said.

18 THE COURT: -- that I add those three words?

19 All right. What's the Defendant's position as to
20 that suggested addition?

21 MR. LOVE: As we've agreed that there's no
22 anticipation or written description defense in the case, I
23 would not have an objection to adding those words.

24 THE COURT: All right. I think it's -- I think
25 it's a worthy suggestion, and I'll make that addition to

1 Question 2 on Page 3.

2 Now that brings us back to Page 4 where Question 3
3 of the verdict form is found. Is there objection from
4 either party here?

5 MS. SNIDER: There's no objection from Plaintiff,
6 Your Honor.

7 MR. LOVE: No objection from the Defendant.

8 THE COURT: All right. Turning then to Page 5
9 where Question 4 of the verdict form is found, is there
10 objection here?

11 MS. SNIDER: No objection from the Plaintiff.

12 MR. LOVE: Yes, Your Honor, an objection from
13 Apple.

14 Apple would request a patent-by-patent finding for
15 willful infringement. Given that the notice periods for the
16 asserted patents are different and the -- the potential for
17 impact on any damages for a finding of willful infringement,
18 we would request patent-by-patent findings here.

19 THE COURT: All right. Well, that objection is
20 overruled. I will, in my instructions, make it clear to the
21 jury that -- I will not tell them that a finding of
22 willfulness could potentially impact the amount of the
23 ultimate award to the Plaintiff. And, in fact, I will tell
24 them, if they find willfulness, they're not to consider
25 that, and I -- I will deal with that later.

1 So given that I don't see any basis for the
2 objection that's been lodged and -- that objection is
3 overruled.

4 Okay. That's Page 5. The last page of the
5 verdict form is Page 6. Is there any objection from either
6 party as to what's contained on Page 6 of the verdict form?

7 MS. SNIDER: No objection from Plaintiff.

8 MR. LOVE: No objection from the Defendant.

9 THE COURT: All right. Counsel, that completes
10 the formal charge conference. I'll make the changes as
11 suggested.

12 As I indicated, I'll consider your motions under
13 Rule 50(a) this evening. I'll give you formal rulings from
14 the bench first thing in the morning.

15 Should those rulings impact the final jury
16 instructions and the verdict form in any way, I'll make the
17 adjustments as required by the JMOL rulings.

18 Otherwise, these documents will stand as they
19 currently exist.

20 MR. LOVE: If I could, Your Honor, one final note
21 for purposes of the record. Defendant wishes to note its
22 objections to the claim constructions and maintains its
23 positions as set forth in Docket 331, its Markman brief,
24 understanding that claim constructions have already been
25 provided to the jury.

1 THE COURT: So noted.

2 Anything further?

3 MS. SNIDER: Your Honor, ContentGuard also objects
4 to the Court's claim construction order to the extent the
5 Court did not adopt the constructions proposed by
6 ContentGuard in Docket No. 304, the Markman brief, for the
7 record, Your Honor.

8 Thank you.

9 THE COURT: All right. That objection is also
10 noted. The Court takes great comfort in your equal
11 displeasure to its prior rulings.

12 With that, the formal charge conference is
13 concluded, counsel. Thank you. You're excused, and I'll
14 see you in the morning.

15 MR. LOVE: Thank you, Your Honor.

16 MS. SNIDER: Thank you, Your Honor.

17 THE COURT: Court stands in recess.

18 COURT SECURITY OFFICER: All rise.

19 (Court adjourned.)
20
21
22
23
24
25

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

<u>/S/Shelly Holmes</u>	<u>11/19/15</u>
SHELLY HOLMES, CSR, TCRR	Date
Official Court Reporter	
State of Texas No. 7804	
Expiration Date: 12/31/16	